

JOINT EXERCISE OF POWERS AGREEMENT TO INSPECT, OPERATE, AND
MAINTAIN THE ALAMEDA POINT WATER SYSTEM IN PREPARATION FOR
TRANSFER OF POTABLE WATER INFRASTRUCTURE

THIS JOINT EXERCISE OF POWERS AGREEMENT is entered into as of this ____ day of March, 2011 among the EAST BAY MUNICIPAL UTILITY DISTRICT (District), the CITY OF ALAMEDA (City), and the ALAMEDA REUSE and REDEVELOPMENT AUTHORITY (ARRA), all public entities (collectively, the Parties).

RECITALS:

A. On May 2, 1997, District and City entered into a Joint Exercise of Powers Agreement for the purpose of providing District labor, services, materials and equipment necessary to operate and maintain the water distribution facilities at Alameda Point (formerly the Alameda Naval Air Station) at City's cost, all in furtherance of the City's caretaker responsibilities pursuant to a Cooperative Agreement between City and the United States Department of the Navy.

B. The Alameda Point water distribution facilities had not previously been operated or maintained prior to May 2, 1997 by the District nor had they been constructed to the standards used by the District for its water system. The facilities will continue to be the property of the United States Department of the Navy (Navy) and/or the City for the term of the Joint Exercise of Powers Agreement, and any amendments thereto.

C. On and after October 20, 2003, the City and the District executed a Third Amended Joint Exercise of Powers Agreement.

D. On and about September 30, 2005, the City and the District executed a Fourth Amended Joint Exercise of Powers Agreement.

E. On and about September 20, 2010, the City and the District executed a Fifth Amended Joint Exercise of Powers Agreement and it is the desire and intention of the parties to enter into the new Agreement among ARRA, the City, and the District with respect to the services to be provided by the District.

F. The District, the City/ARRA are entering into this Agreement to provide interim operations and maintenance services prior to transfer of the potable water infrastructure.

G. The District and City/ARRA mutually desire to maintain and upgrade the existing infrastructure to District standards and specifications so that the eventual transfer of the infrastructure is possible.

H. The District and City/ARRA agree that all work done within the terms of this Agreement shall follow District procedures, and meet District standards and specifications in anticipation of eventual transfer.

NOW, THEREFORE, in consideration of the promises herein contained, the Parties hereby agree to all of the terms and conditions of this Joint Exercise Of Powers Agreement To Inspect, Operate, and Maintain The Alameda Point Water System In Preparation For Transfer Of Potable Water Infrastructure (this Agreement) among the Parties as follows:

TERMS AND CONDITIONS:

1. Purpose. The purpose of this Agreement is to provide interim services to the City and to ARRA, compatible with the policies and practices of the District and in

furtherance of the City's and ARRA's obligations under the Agreement, for the operation and maintenance of the Alameda Point water distribution facilities. All of the foregoing recitals A through H are true and correct. The Alameda Point water distribution facilities for which services will be provided by the District pursuant to this Agreement are described in Exhibit A, attached hereto and incorporated herein in full by this reference. City/ARRA shall comply with all District Regulations Governing Water Service to the Customers of the East Bay Municipal Utility District (District's Regulations), District Water and Wastewater Schedule of Rates and Charges to Customers of the East Bay Municipal Utility District (District's Rate Schedules), District Rules, District Policies, and District Procedures, laws, regulations, statutes, and ordinances, as applicable.

2. Operation and Maintenance Services. District shall provide personnel to perform operations and maintenance activity, and related services, with respect to the Alameda Point water distribution facilities as set forth in Exhibit B, attached hereto and incorporated herein in full by this reference. District shall have the right, at its sole discretion, to perform the work, or any portion thereof, under contract or by District forces. Unless restrained by the Navy, the City, and the District shall have unlimited and unimpeded access to the Alameda Point water distribution facilities to enable District to perform the services hereunder.

2.1 Materials and equipment. Except as otherwise provided in this Agreement, all materials and equipment necessary for the performance of said operations and maintenance services shall be provided by the District. Staging areas for the District equipment and materials are to be provided by ARRA at Alameda Point as necessary. City will provide staging areas, should ARRA fail to do so.

2.2 Supervision and Control. The District shall have sole and exclusive supervision and control over its operations under this Agreement, including but not limited to the size and makeup of crews providing services hereunder, and unless restrained or restricted by the Navy or the City, the type and level of services provided and the timing and scheduling of said services. It is understood and agreed that the time of work hereunder shall be determined by District on the basis of its overall scheduling requirements and needs, taking into account such factors as the availability of work crews, materials, equipment, other commitments and contracts of District, and emergency jobs or installations. The City and ARRA (collectively, City/ARRA) shall be jointly and severally liable to the District for all duties, liabilities, responsibilities, and obligations arising out of or relating to this Agreement. Where the term City/ARRA is used herein, the term means both the City and ARRA or each of them. To the extent possible, District will notify affected tenants of any planned interruption of water service due to maintenance activities. District agrees to discuss changes in its practices or amendments to this Agreement if City/ARRA requests such discussions to avoid breaching City/ARRA's obligations under the Agreement or to avoid suspension, disallowance, or termination of any payments from Navy to City/ARRA under the Agreement. Matters of overall District priorities shall be determined by District.

3. Costs. City/ARRA shall compensate the District for all of its actual costs to perform operations and maintenance activity, and related services as provided herein, in addition to payment of the standard water consumption charges for water delivered to Alameda Point as provided in Section 4.3 hereof.

3.1 Routine Operations and Maintenance Cost Caps and Non-Routine O & M.

Except as provided in Exhibit B, Section 6, the District will limit its routine operations and maintenance services under this Agreement to those that can be provided at a cost of \$7,000 per month with escalation as follows. The cap shall be increased after the first year by 5% per year, or by the Bureau of Labor Statistics Consumer Price Index for Urban Wage Earners and Clerical Workers monthly (CPI-W) for the San Francisco/Oakland/San Jose regions, whichever is greater, each year during the term of this Agreement. In addition to routine services, the District may provide one-time non-routine services as the District determines may be necessary, such as but not limited to, performing emergency repairs, backflow or cross connection surveys, and/or infrastructure renewal or improvements all of which shall be charged individually on an actual cost basis.

3.2 Emergency Repairs. The District shall provide emergency services as needed up to \$30,000 per emergency repair event, unless the City provides verbal approval to perform services above said amount which shall be verified in writing within 24 hours. The \$30,000 cap shall be increased as set forth in Section 3.1. Refer also to Exhibit B, Section 6.

4. Monthly Billing. District will determine the actual amount of its costs incurred in performance of the work hereunder. On a monthly basis, District shall prepare an itemized invoice, for the preceding month, detailing these actual operation and maintenance costs. Water consumption shall be billed separately per Section 4.3.

Invoices shall be submitted to:

City of Alameda
Attention: Jesse Barajas, Maintenance Superintendent

Maintenance Service Center
1616 Fortmann Way
Alameda, CA 94501
(510) 747-7900

Invoice inquiries should be directed to:

East Bay Municipal Utility District
Attention: Leann Gustafson
Manager of Distribution Maintenance and Construction
375 11th Street, MS #608
Oakland, CA 94607-4240
(510) 287-0859

The City/ARRA shall pay the amount of the invoice within thirty (30) days following receipt of District's written invoice. Actual costs include materials, labor, use of equipment, all District standard overhead charges, subcontractor services and all other costs incurred by the District to provide the maintenance and operation services hereunder. District's determination of all costs shall be final and binding, provided that such determination shall be made in accordance with generally accepted accounting principles.

4.1 Billing Review. District agrees to make available its accounting records upon request by City/ARRA. Should City/ARRA believe that an error in billing has been made, District will meet with City/ARRA, upon request, for purposes of reviewing the relevant financial data; provided, however, that nothing herein shall affect City/ARRA's obligation to make timely payment as provided in Section 4.0. In the event that an error is confirmed by District, District shall refund any overpayment made by City/ARRA.

4.2 Auditor Review. Should any of the Parties desire review of a cost issue by an auditor, auditors from both the District and City/ARRA shall jointly review the issue within 60 days. Should the auditors disagree, an independent auditor shall be chosen

within 30 days of the agency auditors' joint review, to decide the issue. The auditor's fee shall be paid by the initiating agency and reimbursed by the agency in error.

4.3 Water Consumption Charges. City/ARRA shall pay all of the District's standard water consumption charges for water delivered to Alameda Point. These consumption charges shall not be included as part of the Cost Cap as described in Sections 3, 3.1, and 3.2.

5. Indemnification. The City/ARRA shall defend, indemnify, save, and hold harmless the District and its Directors, officers, associates, agents, contractors, subcontractors, and employees from any and all claims, demands, suits, costs, expenses, and liability for any damages, injury, sickness, or death, including attorneys' fees, howsoever same may be caused, arising directly from or in any way connected with performance of the agreement, the operation and maintenance services performed by the District, its Directors, officers, associates, agents, contractors, subcontractors, and employees, or any act or omission by the City/ARRA, its governing board members, officers, associates, agents, contractors, subcontractors, and employees pursuant to this Agreement, including but not limited to liability for inverse condemnation, nuisance, trespass, lost profits, or interruption of water service, or liability under any state or federal law or regulation governing the handling and disposal of contaminated soil or hazardous waste, except to the extent caused by the gross negligence or willful misconduct of the District. In the event action is brought against the City/ARRA, or City/ARRA is joined therein, the City/ARRA shall provide its own defense at the sole cost and expense of the City/ARRA.

6. Insurance Requirements. City/ARRA shall furnish and maintain, during the life of this Agreement, all the coverage required by this Section and Section 6.1 and shall submit a memorandum of such coverage to the District. If the City/ARRA is self-insured, the District will accept proof of self-insurance from the City/ARRA. Acceptance of the Memorandum of Coverage shall not relieve the City/ARRA of any of the requirements, nor decrease the liability of the City/ARRA. The City/ARRA shall provide workers' compensation, commercial general liability, automobile liability, and pollution liability insurance. The City/ARRA shall furnish and maintain during the life of this Agreement, Workers Compensation insurance for all of its employees at Alameda Point. In lieu of evidence of Workers Compensation insurance, the District will accept a self-insured certificate from the State of California. The City/ARRA shall require any subcontractor to provide it with evidence of Workers Compensation insurance. The City/ARRA shall require its Workers Compensation insurance carrier to provide a waiver of subrogation against the District.

6.1 Commercial General Liability, Automobile Liability, and Pollution Liability Insurance. The City/ARRA shall furnish and maintain during the life of this Agreement general liability coverage that provides protection from claims which may arise from operation or performance under this Agreement. The amounts of coverage shall be not less than the following:

\$15,000,000/Occurrence, Bodily Injury, Property Damage – General Liability.

\$5,000,000/Occurrence, Bodily Injury, Property Damage – Automobile Liability.

\$15,000,000/Occurrence, Bodily Injury, Property Damage – Pollution Liability.

The following coverage or endorsements are required:

(1) The District, its Directors, officers, and employees are Additional Covered Parties in the Memorandum of Coverage or Additional Insureds in the Pollution Liability policy(ies) as to the work being performed under this Agreement.

(2) The coverage is primary and non-contributory to any other insurance carried by the District.

(3) The coverage includes contractual liability for the assumption of liability of others and through the indemnity in this Agreement.

(4) The Workers' Compensation, Commercial General Liability, and Automobile Liability coverage is written on an Occurrence basis. The Pollution Liability coverage is written on a Claims Made basis.

(5) The coverage includes personal injury (libel, slander, and trespass) liability.

(6) The coverage shall not be canceled nor reduced unless 30 days' written notice is given to the District.

(7) The coverage includes District property in the City/ARRA's care, custody and control.

(8) The coverage includes use of owned, non-owned, and hired automobiles.

(9) The coverage includes Pollution Liability for claims related to sudden and accidental discharges of pollutants into the environment arising out of or resulting from performance under this Agreement.

(10) The coverage includes explosion, collapse and underground hazards.

(11) The coverage includes products and completed operations.

(12) The coverage includes a waiver of subrogation by carrier(s) against the District and its Directors, officers, agents, and employees.

(13) The coverage shall not be cancelled nor reduced unless 30 days' written notice is given to the District.

6.2 Excavated Soil Management. In the course of the work hereunder, the District may encounter soil and/or groundwater that may contain contaminants, such as volatile organic compounds, fuels, heavy metals, radium, and/or other hazardous materials. In order to effectively and safely manage excavated soils on the Alameda Point site, City/ARRA agrees to designate a transfer facility for centralized stockpiling of soil. District will do a preliminary evaluation of the excavation site. District will deposit spoils into the transfer station for disposal by City/ARRA. City/ARRA shall be responsible for the handling, maintenance and disposal of excavated soils in accordance with all applicable state, federal and local regulations. Navy is presumed to be the generator of all excavated soil. City/ARRA is responsible for obtaining any necessary excavation permit. It is understood and agreed that, if contaminants are encountered, such that District personnel cannot safely operate or maintain the Alameda Point water system, as provided herein, operations and maintenance activities will be delayed or stopped during the removal, treatment or disposal of said contaminants and water service may be interrupted. The District shall timely call the City/ARRA and notify the City/ARRA and Navy in writing of the presence of such contaminants and be available to discuss options for contaminated soil removal and transporting to the transfer station such that water system repairs can be completed in a timely manner. The District may choose not to remove contaminated soils at any excavation required for operation and maintenance of the system.

7. Environmental Contamination. The City/ARRA agrees to supply the District with updated remediation information, such as but not limited to, "hot zone" maps, sampling results, and the status of environmental remediation efforts every six months generally in March and September of each year. The City/ARRA shall provide the name and contact number of the responsible party for current remediation records for purposes of determining hazardous conditions before necessary work commences. The Parties acknowledge that much of the City/ARRA's environmental information concerning Alameda Point is supplied by the Navy. The City/ARRA has specified the following as the current environmental remediation contact:

Peter Russell, PhD, PE
Russell Resources, Inc.
415-902-3123
peter@russellresources.com

Doug DeLong, NAVY
510-772-8832
douglas.delong@navy.mil

8. Term Agreement. District shall continue providing the operation and maintenance services described in Section 2. until this Agreement terminates on March 31, 2016. In the event of termination, District shall be entitled to compensation for services performed to the effective date of termination.

9. Communications. The District's project manager for the work covered by this Agreement will be:

Margo Schueler, Construction and Maintenance Superintendent
East Bay Municipal Utility District, MS #60
375 - 11th Street
Oakland, CA 94607
(510) 287-1690
MSchuele@ebmud.com

The City's project manager for said work will be:

Jesse Barajas, Maintenance Superintendent
Maintenance Service Center
1616 Fortmann Way
Alameda, CA 94501
(510) 747-7900
JBarajas@ci.alameda.ca.us

If any of the individuals in the positions specified as contacts in this Agreement change, the appropriate Party shall notify all other Parties of the name, address, phone number, and email address of the new individual contact person for that Party within 30 days. The District will advise City's project manager, or designee, as soon as practicable whenever emergency or other non-routine work will be performed by District. Emergency and non-routine work includes, but is not limited to, leaks, water main breaks, system investigations, and customer complaints. Except for the notice required under Section 6.2 and Exhibit B (6), no other notice of District work hereunder is required to be given to City.

9.1 Annual Meetings re: Milestones. District, City, and ARRA shall hold annual meetings in or about March to review contract performance and progress towards transfer of the infrastructure, and to exchange maps and right of entry agreements. The Milestones towards transfer of the infrastructure are documented in Exhibit C attached hereto and incorporated in full by this reference. The Parties understand that these Milestones are the City/ARRA's best and most current timeline. The status of the progress toward meeting all of the Milestones shall be reviewed at the annual meetings. City/ARRA shall make best efforts to keep the District apprised of all future developments at Alameda Point and of any work not done by District forces on the water infrastructure at Alameda Point.

9.2 Notices and Demands. Any demand to be made or notice to be given by any or all Parties hereunder shall be deemed to have been given within three (3) business days of such notice being deposited in the United States mail and sent postage prepaid and addressed as follows:

District:

Michael J. Wallis
Director of Operations and Maintenance
375 – 11th Street, MS #606
Oakland, CA 94607
Wallis@ebmud.com

City:

Matthew Naclerio, Public Works Director
City Hall West
950 West Mall Square, Suite 110
Alameda, CA 94501
(510) 749-5840
MNaclerio@ci.alameda.ca.us

ARRA:

Nanette Mocanu, Economic Development Division Manager
City Hall
2263 Santa Clara Avenue
Alameda, CA 94501
(510) 747-6886
NMocanu@ci.alameda.ca.us

Email addresses in this Agreement are given for informational purposes but do not satisfy U.S. mail or telephone notice requirements of this Agreement.

9.3 Required Reports. City/ARRA agrees to provide annual information by January 15th of each year to Maintenance Superintendent Margo Schueler of the District. The information to be provided consists of:

1. Total number of active connections
2. Total number of inactive connections

3. Number of metered connections
4. Number of unmetered connections
5. Number of year round residents the system serves
6. Approximately how many people were onsite during the busiest day in the past calendar year
7. Total number of backflow prevention devices in the system
8. Number of backflow devices installed during the year
9. Number of backflow devices tested during the year
10. Number of backflow devices failed during the year
11. Number of backflow devices repaired/replaced during the year
12. Provide a copy of the CCR Annual Water Quality Report to Customers.

Notwithstanding the reporting requirements above due on January 15th of each year, the City/ARRA agrees to provide timely reporting of work which may affect water quality. Work such as installation of new services and changing meters are examples of work that may affect water quality.

10. Phasing. The Parties recognize that it is in their mutual interest to work together in planning for proposed changes in uses within Alameda Point. The City/ARRA shall make its best efforts to notify the District in advance of the Navy, City, or ARRA transferring fee ownership or entering into a significant lease in Alameda Point, and to reserve all appropriate utility easements. Whenever the City/ARRA enter into an Exclusive Negotiating Agreement (ENA) or Disposition and Development Agreement (DDA) with any developer at Alameda Point, the City/ARRA shall forward a copy of the ENA and DDA to the District within 30 days of entering into the ENA or DDA. The Parties recognize that the District intends to provide services under this Agreement to the City/ARRA, not to new third parties who become owners of portions of Alameda Point in the future, a real property conveyance process which is anticipated to occur in phases. The map in Exhibit A-1, attached hereto and incorporated in full by this reference sets forth the area currently served by this Agreement. When fee ownership of a portion of Alameda Point is transferred either by the Navy, City or ARRA to any entity other than

the Navy, City or ARRA, including but not limited to a developer, the City/ARRA shall notify the District in writing no later than 30 days after transfer and shall submit to the District a copy of the deed that includes a precise description of the location and a map delineating the area deeded or transferred. The District shall have 30 days to review and consider approval of the submittals, and to notify the City/ARRA in writing of the approval of, or of any problems with, the submittals. Once the submittals and maps have been deemed sufficient for District purposes in writing by the District, the mapped parcel shall be removed from all operations and maintenance responsibilities of the District specified in Exhibit B. The Parties agree that the map of each such parcel(s) so identified shall be added as Exhibits A-2, A-3, A-4, etc. to this Agreement and serve as the record of the reduction in the area of District responsibility for operations and maintenance under this Agreement. The City/ARRA shall provide advance notice to each new deed holder, property owner, property transferee, or lessee or sublessee in a lease or sublease of 8 years duration or longer, at Alameda Point, important information concerning water usage, including information in substantial conformity with the following: "You, the new water user at Alameda Point, are not automatically a customer of the East Bay Municipal Utility District (EBMUD). Alameda Point is currently served by 3 master water meters on a grid system which serves other customers, and you may experience water service outages during repairs to infrastructure. To become a customer of EBMUD, please notify EBMUD at your earliest feasible convenience for a new water service installation. "

11. Entire Agreement. This instrument contains the entire Agreement of the parties relating to the rights granted, obligations assumed, and supersedes all prior written and oral discussions or representations and is not intended to create any third party rights.

12. Modification of Agreement. Notwithstanding any of the provisions of this Agreement, the parties may agree to modifications, amendments, or additions hereto only by mutual written consent.

13. Severability. Should any part of this Agreement be declared by a final decision by a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of either party to enter into or carry out, such decision shall not affect the validity of the remainder of this Agreement, which shall continue in full force and effect, provided that the remainder of this Agreement, absent the unexcised portion, can be reasonably interpreted to give effect to the intentions of the parties.

14. Controlling Law. This Agreement and all matters relating to it shall be governed by the laws of the State of California.

15. District Right to Terminate Water Service. It is understood and agreed that this Agreement shall in no way restrict or limit the District's right to terminate water service for nonpayment of billed charges or other permissible reason.

16. No Waiver. The District's waiver of the performance of any covenant, condition, obligation, representation, warranty or promise in this agreement shall not invalidate this Agreement or be deemed a waiver of any other covenant, condition, obligation, representation, warranty or promise. The District's waiver of the time for performing any act or condition hereunder does not constitute a waiver of the act or condition itself.

17. No Discrimination. There shall be no discrimination against any person, or group of persons, on account of race, color, religion, creed, national origin, ancestry, gender, age, marital status, disability, or sexual orientation in the performance of this

contract. Neither City/ARRA nor District shall establish or permit any such practice(s) of discrimination with reference to the contract or any part thereof. Any Party determined to be in violation of this section shall be deemed to be in material breach of this Agreement.

18. Timing. Time is of the essence of this Agreement.

19. Confidentiality. City/ARRA agree to maintain in confidence and not disclose to any person or entity, without District's prior written consent, any trade secret or confidential information, knowledge or data relating to the products, process, or operation of District. City/ARRA further agree to maintain in confidence and not to disclose to any person or entity, any data, information, technology, or material developed or obtained by City/ARRA during the term of this Agreement, except as required by law. The covenants contained in this paragraph shall survive the termination of this Agreement for whatever cause.

20. Not District Employees. City/ARRA is an independent contracting party and not an employee of District. City/ARRA expressly warrants that it will not represent that it is an employee or servant of District. If, in the performance of this agreement, any third persons are employed by City/ARRA, such person shall be entirely and exclusively under the direction, supervision, and control of City/ARRA. All terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by City/ARRA, and District shall have no right or authority over such persons or the terms of such employment. It is further understood and agreed that as an independent contractor and not an employee of District, neither the City/ARRA nor City/ARRA's assigned personnel

shall have any entitlement as a District employee, right to act on behalf of District in any capacity whatsoever as agent, nor to bind District to any obligation whatsoever.

City/ARRA shall not be covered by District's worker's compensation insurance; nor shall City/ARRA be entitled to compensated sick leave, vacation leave, retirement entitlement, participation in group health, dental, life or other insurance programs, or entitled to other fringe benefits payable by District to employees of District.

21. Binding on Successors. This Agreement is to be binding on the successors of the Parties. The activity of City/ARRA contemplated herein is deemed unique and City/ARRA shall neither assign, transfer, nor otherwise substitute its interest in this Agreement nor any of its obligations hereunder without the prior written consent of the District.

22. Signatories Authorized. This Agreement has been executed by the respective Parties through their respective authorized officers to be effective on the date first above written. Multiple copies of this Agreement may be executed by the Parties and the Parties agree that the Agreement on file at the District is the version of the Agreement that shall take precedence should any differences exist among counterparts of the Agreement.

23. Disputes. Any disputes occurring under this Agreement shall first be reviewed and settled by the respective General Manager or City Manager of the affected Parties. In the event that the Parties cannot resolve such disputes between them, then, upon thirty (30) calendar days written notice, the aggrieved Party may seek judicial relief.

24. Interpretation. This Agreement shall be deemed to have been prepared equally by all of the Parties, and the Agreement and its individual provisions shall neither


be construed nor interpreted more favorably for one party on the basis that the other party prepared it. The headings used in this Agreement are for reference purposes only and do not constitute substantive matters to be considered in construing the terms of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers in Oakland, California, on this _____ day of _____, 2011.

CITY OF ALAMEDA

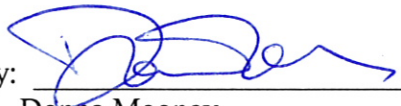
By: _____
Lisa Goldman, Acting City Manager

Date: _____

By: 
Recommended for approval
Matthew T. Naclerio, Public Works Director

Date: 3-10-11

Approved as to Form:
City Attorney

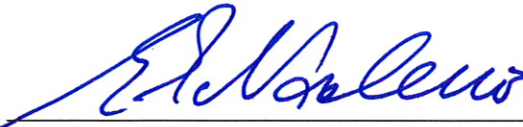
By: 
Donna Mooney
Acting City Attorney

Date: _____

ALAMEDA REUSE AND REDEVELOPMENT AUTHORITY


By: _____
Lisa Goldman, Acting Executive Director

Date: _____

By:  _____
Recommended for approval
Matthew T. Naclerio, Public Works Director

Date: 3-10-12

Approved as to Form:
City Attorney

By:  _____
Donna Mooney
Acting ~~City Attorney~~ General Counsel

Date: _____

EAST BAY MUNICIPAL UTILITY DISTRICT

By: _____
Michael J. Wallis
Director of Operations & Maintenance

Date: _____

Approved as to Form:
Office of General Counsel

By: _____
Joel Freid
Attorney III

Date: _____

EXHIBIT A

Facilities Which Will Be Maintained and Operated by the District

For purposes of this agreement, the Alameda Point potable water system includes water distribution piping and fire suppression water distribution piping. The system includes valves and hydrants. Except as otherwise provided, the District will operate and maintain said potable water distribution system; provided, however, that the District's responsibilities therefor shall terminate at the point that any pipeline included in said system passes beneath or connects to any building or structure as part of the water delivery system, or passes onto any pier or wharf. In the event that a water system pipeline leak or failure occurs under a building or structure, the District will attempt to isolate the leak and contact the City as soon as possible for the City to determine how repairs should be effected. Additionally, where a building shutoff valve exists or at such time as a meter is installed for purposes of measuring water delivery to any residence or business situated at Alameda Point, the District's maintenance and operational responsibilities with respect to the water delivery system providing water service to said residence or business shall thereafter terminate at said shutoff valve or meter. Under no circumstances, shall the District repair or otherwise maintain water pipelines and appurtenances within buildings and other structures or on piers or wharves. In the event that the District determines that maintenance or operation work is beyond its responsibilities hereunder, the District will promptly notify the City. A map of the area covered under the current Agreement, Exhibit A-1 is attached hereto and incorporated

herein in full by this reference. The District may in the future add subsequent Exhibits A-2, A-3, A-4, etc. in accordance with Section 10 Phasing of the Agreement.

EXHIBIT B

Water System Operation and Responsibilities

District will operate and maintain the portion of the Alameda Point Water System, as identified in Exhibit A, according to customary water utility standards of practice.

District will endeavor to provide a level of service as close as possible to the level of service provided for the District owned system and to operate in a manner consistent with the California Department of Public Health, formerly a part of the California Department of Health Services Permit #020498P0110016 issued to the Navy; however, the Parties acknowledge that the level of service cannot be assured as the Alameda Point system has not been constructed to District standards and that there are portions of the Alameda Point water system that are not under the District's physical or financial control and thus limits the District's ability to ensure compliance with the DHS permit.

Operation and maintenance responsibilities include the following activities:

1) WATER QUALITY MONITORING (sample collection, analysis and reporting)

- a. Preparation of a water quality sampling plan
- b. Routine bacteriological testing and chlorine residual measurements
- c. Water quality testing and analysis as needed in response to customer inquiries, main breaks, positive coliform bacterial results from the routine programs, etc.

Other water quality testing and analysis as directed by the California Department of Public Health (DPH)

2) RESPONDING TO CUSTOMER INQUIRIES

Customer inquiries regarding water quality, water pressure and water flow will be investigated and appropriate response will be provided depending upon the nature of the inquiry to the extent possible given the limitations of the existing plumbing system.

3) SYSTEM FLUSHING

- a. As required to address water quality issues, customer inquiries, pipe repairs
- b. City/ARRA shall pay for all water used for hydrant flushing, hydrant testing, unidirectional flushing, disinfection, and dechlorination.

4) DISINFECTION AND DECHLORINATION

- a. Disinfection of pipes and appurtenances as required in response to main breaks, main repairs, appurtenance installation, etc, to ensure sanitary condition of distribution system
- b. Perform dechlorination of potable water released to storm system or receiving waters as needed to prevent any adverse environmental impacts and to comply with storm water regulations

5) HYDRANT FLOW TESTS

Perform or coordinate with the City Fire Department to perform hydrant flow tests if needed for verification of fire flow or hydraulic model calibration.

6) WATER MAIN REPAIR

- a. Investigation, leak identification, excavation, repair, testing, backfill and resurfacing associated with broken or leaking water mains.
- b. Installation of service line valves at locations that facilitate for future meter installation and/or to facilitate repairs.
- c. The District shall request and obtain advance approval from the City for any planned repairs estimated to be in excess of \$7,000.
- d. If an emergency repair is required, the District may proceed to secure the emergency without approval, and fully repair if repair is estimated to be less than \$30,000. Such caps are subject to escalation as set forth in Section 3.1. District shall use due diligence in responding and shall contact and advise City within 24 hours of an emergency repair.

7) APPURTENANCE INSTALLATION, REPLACEMENT AND REPAIR

- a. Installation, replacement or repair of hydrants, valves, meters, as needed to maintain current Alameda Point level of service
- b. Installation of blow-offs as needed to maintain water quality

8) POTABLE WATER SYSTEM MAINTENANCE AND REPAIR

Maintenance, replacement and repair of equipment as needed to meet current Naval Air Station (NAS) level of service for the potable water system. District will operate the distribution pipelines to maintain acceptable water quality in the distribution system to the extent possible.

9) BACKFLOW PREVENTION

The City/ARRA shall comply with all the requirements of Title 17 of the California Code of Regulations (CCR), Sections 7583, 7584, 7585, 7586, 7601, 7602, 7603, 7604, and 7605.

To meet the requirements of Section 7584, the City/ARRA shall do all of the following tasks below:

- a. The adoption of operating rules or ordinances to implement a cross-connection program. The City/ARRA will follow all of the requirements of Section 26 of the District's Regulations.
- b. The conducting of surveys to identify water user premises where cross-connections are likely to occur. The City/ARRA shall provide to the District a change of occupancy notification within two weeks of a change in occupancy within Alameda Point. The District will then perform a survey of that premises to determine any need for a backflow device according to District standards. The City/ARRA shall provide to the District an annual summary report of the changes in responsible parties by June 30th of each year. The City/ARRA shall notify the District within 30 days of any change in occupancy.
- c. The provisions of backflow protection by the water user at the user's connection or within the user's premises or both. District will specify the location or locations and type or types of backflow prevention needed to meet District standards. If the City/ARRA chooses to defer installing a device in accordance with District standard (point of service protection),

the City/ARRA must notify the District so that another survey can be performed to meet DPH standards (point of hazard protection). The City/ARRA shall be responsible for purchasing and installing backflow devices. The City/ARRA shall be responsible to issue authorization of and for contract payment for the required work. The City/ARRA will notify the District within 30 days of completion of the work.

- d. The provision of at least one person trained in cross-connection control to carry out the cross-connection program. The District will maintain staffing to perform surveys and make recommendations where backflow devices are needed.
- e. The establishment of a procedure or system for testing backflow preventers. The City/ARRA will test backflow prevention devices as necessary to protect water quality and annually for DPH requirements. The City/ARRA will ensure all backflow devices are tested by a certified AWWA General Backflow Tester that is also approved by the District. The District can provide a list of approved testers. Testing will be tracked on the Districts Fiscal Year. All testing and repairs must be completed by June 30 for the year it is due.
- f. The maintenance of records of locations, tests, and repairs of backflow preventers. The City/ARRA will forward all signed original maintenance records to the District. The District will store and maintain these documents.

The City/ARRA's annual backflow maintenance records, notification of a change of occupancy, and annual summary report of such changes shall be sent to the District by June 30th of each year to the Construction and Maintenance Superintendent named in Section 8 with a cc to:

Tim Collins, Senior Backflow Inspector
East Bay Municipal Utility District, MS #47
375 - 11th Street
Oakland, CA 94607
tcollins@ebmud.com
(510) 287-0815

And,

Jeffrey Braun, Meter Repair and Testing Supervisor
East Bay Municipal Utility District, MS #47
375 - 11th Street
Oakland, CA 94607
jbraun@ebmud.com
(510) 287-0844

10) WATER SUPPLY PERMIT

- a. City/ARRA or the Navy shall be the holder of the permit to operate the Alameda Point water system until the District accepts conveyance of said system.
- b. If necessary, District will assist the City/ARRA in the preparation and submission of a Water Supply Permit Application to DPH.
- c. District will provide information, verbal and written, to support the application.

11) REPORT PREPARATION

If necessary, District will prepare water quality reports, on behalf of the City/ARRA, as required to meet DPH requirements. These reports may include annual water quality reports, reports of maximum contaminant level violations, etc.

12) NOTIFICATION

District will provide notification to City/ARRA and DPH, as required regarding water quality problems and significant system outages. 13) WATER SYSTEM

MARKING

District will mark location of water system facilities in response to Underground Service Alert requests. Such markings will be based solely on available maps, supplied by Navy or City/ARRA to District. District accepts no responsibility as to the accuracy of said maps.

14) ENGINEERING

In order to affect system repairs and maintain a reasonable level of service, some engineering services may be required. The District will provide those services as needed to ensure repairs and level of services are adequate.

15) NEW SERVICE INSTALLATIONS AND METERING REQUIREMENTS.

California Water Code Sections 526 and 527 may require installation by January 1, 2013 of water meters on all service connections to residential and commercial buildings constructed prior to 1992. To the extent compliance with this individual metering requirement is mandated in Alameda Point, including but not limited to mandated by the US Bureau of Reclamation pursuant to the District's federal Central Valley Project water supply contract, the City/ARRA shall timely comply with the requirement and bear all the costs of such compliance at Alameda Point. At the request of the City/ARRA, the

District will review and install new services for domestic use, fire supply, or other purposes in accordance with all District's Rules, Regulations and Rate Schedules. Upon receipt of proper authorization from the City/ARRA, the District will coordinate with the City/ARRA's tenants or others as needed, on behalf of the City/ARRA, to facilitate the application process through the District's New Business Office for the review and installation of the authorized water services. New services must be installed by the District and metered in accordance with District standards and specifications, and shall be considered acceptable under District standards for the purposes of future transfer of the water infrastructure to the District. All costs for new service installations shall be based on an actual cost agreement between the City/ARRA and District and reimbursed by the City/ARRA or the City/ARRA's authorized applicant or agent.

Installation of new services shall be processed through the District New Business Office in accordance with District procedures. In addition, location of these services is subject to final District approval. All new services will be installed by District forces according to District standards and specifications. Examples of new services include:

1. Fire Services
2. Service Laterals and Meters
3. Hydrants
4. Backflow Prevention Measures

16) NEW OR REPLACEMENT WATER MAINS

Based on the City/ARRA's current redevelopment plans, replacement of significant portions of the existing distribution system is not anticipated to occur within the

next five years; however, if main replacements are required within the timeframe of this Agreement, and depending on the scope and location of main replacements within Alameda Point, the City/ARRA shall furnish the District with the best available data on proposed land uses, to ensure that replacement mains are sized appropriately to meet current and future needs. The District will determine if a hydraulic analysis is needed and if so, conduct a hydraulic analysis at City/ARRA's expense prior to designing any new or replacement mains.

At the request of the City/ARRA, the District will design new or replacement water mains in accordance with District's Rules, Regulations and Rate Schedules. Upon receipt of proper authorization from the City/ARRA, the District will coordinate with the City/ARRA tenants or others as needed, on behalf of the City/ARRA, to facilitate, through the District's New Business Office, the application process for a new water main. These water system improvements are best installed by the District to ensure consistency with District standards and specifications.

Alternately, the City/ARRA may undertake installation of these improvements; however they shall be inspected and approved by the District per the District's standard practice for new applicant constructed pipelines. The District will provide a preliminary cost estimate for the District to review and design the new water main, supply all steel pipeline materials and appurtenances, and inspect the water main installation by the City/ARRA's contractor to ensure consistency with District Standard Specifications and Standard Drawings. The costs for any new or replacement water mains will be described under a Miscellaneous Agreement between the City/ARRA and the District and costs will be based on the actual cost

of all labor and/or materials provided in accordance with Section 3C of the District's Regulations and the District's Schedule of Rates and Charges to Customers. City/ARRA shall conduct a pre-construction meeting with the District and provide a notice of 10 working days to District prior to actual commencement of any pipeline installations by the City/ARRA's contractor. Upon completion of any work performed by the City/ARRA's contractor, acceptance or non-acceptance of the installation will be provided in writing by the District. All costs for the new or replacement water mains and related services, such as new services or the transfer and reconnection of existing services to the new or replacement water main, shall be paid for by the City/ARRA or the City/ARRA's authorized applicant or agent.

17) MASTER PLAN OR ENTITLEMENT PLAN REVIEW. All development plans that may affect the water system in Alameda Point shall be reviewed by the District. City/ARRA shall give the District a minimum of 45 working days for review. The District will review and report on water system impacts of the proposed or future land use plans, including impacts such as phasing, grade changes, and their effect on pipeline relocation plans. City/ARRA shall reimburse District for the cost of the review under this Agreement or under a separate Miscellaneous Agreement per Section 3C of the District's Regulations.

EXHIBIT C

Milestones

for Transfer of the Alameda Point Potable Water Infrastructure

1. April 2011 - Public Review of Preliminary Development Concept Description and Alternatives
2. July 2011 - Council and ARRA endorsement of Preliminary Development Concept and Alternatives
3. Third Quarter 2011 - City CEQA and Navy NEPA Processes Begin (Environmental Review)
4. Third Quarter 2012 - Draft Specific Plan released for Public Review
5. First Quarter 2013 - Draft EIR and NEPA documents released for Public Review
6. Third Quarter 2013 - Navy Approves NEPA/Conveys Property
7. Third Quarter 2013 - City Approves CEQA/Approves Specific Plan
8. 2014 - Individual Project Entitlements For Phase 1 Approved
9. 2015 - Construction Commences

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